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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL JOEL BROWN,

Defendant and Appellant.

C049382

(Super. Ct. No.
03F08337)

Defendant robbed and killed Jacqueline Schultz, his 79-year-old next door neighbor. A jury convicted defendant of special circumstance murder during the commission of a robbery, first degree robbery, and other crimes. The trial court sentenced defendant to life without the possibility of parole. On appeal, defendant contends (1) the trial court abused its discretion by admitting photographs of the victim, (2) the court erred by giving an instruction on motive (CALJIC No. 2.51), and (3) cumulative errors require reversal. We affirm.

FACTS

Jacqueline Schultz lived alone, next door to the Stabile family on Norwood Avenue in Sacramento. She was 79 years old and independent, although she used a walker. In early 2003, defendant moved in with the Stabiles. He did odd jobs and gardening work for Schultz. In September 2003, defendant did some painting for Schultz inside the house. On Wednesday, September 10, neighbors saw defendant and Schultz, with Schultz driving her red Ford Tempo, leaving the house and returning together with paint cans. The next day, a neighbor saw defendant enter Schultz's house and noticed that Schultz did not put her garbage out for collection as she normally did on Thursday evening.

Also on Thursday, September 11, defendant took Schultz's car to visit his mother in Fair Oaks. That afternoon, the car was ticketed for being in an emergency zone near the American River in Fair Oaks at 4:33 p.m.

James Schultz, Jacqueline's son, spoke to her by telephone on Thursday evening between 5:00 and 6:00. While he was on the phone with her, she interrupted the conversation and said, "That's okay, Mike [defendant's name]."

At some point Thursday night, Earl Stabile's wife Wendy (a codefendant below) left their residence with defendant. That evening, defendant checked into a motel in Rancho Cordova, paying cash. He stayed until the next day (Friday, September 12). Wendy returned home Friday, saying she and defendant had been at a friend's house. After that Friday, Earl Stabile saw

neither defendant nor Wendy, defendant having taken most of his own possessions from his room.

For the next several days, newspapers piled up on Schultz's porch. James tried to call his mother, but she did not answer. On Tuesday, September 16, James, accompanied by his wife Deva, went to his mother's home to check on her. He found the front and back security doors locked. He opened the front security door with his key but found the inside wooden door locked even though Schultz always left that door unlocked. Through the mail slot, Deva noticed a foul smell and saw a chair out of place.

With Earl Stabile's help, James pried open the back security door and inner door. They found Schultz's body, surrounded by blood. It was severely decomposed and infested with maggots. The house, which showed signs of being prepared for painting, had not been ransacked. James found that the canvas bag Schultz kept on her walker, with her wallet and keys, was missing, along with her portable phone and her pearl necklace and earrings. Schultz's car was also missing.

An entomologist who studied the insects on the corpse determined that Schultz died between Thursday evening (September 11) and Friday morning (September 12), four and a half to five days before she was discovered. She suffered blunt force head injuries, multiple lacerations and fractures, and possible strangulation. Investigators observed bloody shoe prints but were unable to connect those shoe prints to any particular shoe. They found multiple fingerprints in the house but were unable to

match those prints to a person, except for defendant's fingerprint on a plastic credit card holder.

A neighbor saw defendant driving Schultz's car on Friday morning. She accepted a ride from defendant and Wendy Stabile. Defendant was nervous and sweaty and acted strangely. He wore new shoes. Later that morning, another neighbor saw defendant drive the Tempo from Schultz's driveway to the Stabile residence and Schultz's driveway with the Tempo. Wendy emerged from the Stabile residence and got into the car with defendant. They drove away quickly and did not return.

From Friday, September 12, to Saturday, September 20, defendant made or attempted to make purchases in California and Nevada using Schultz's credit cards. He bought new clothes, ate at restaurants, put gas in the Tempo, and stayed in motels. On Tuesday, September 23, defendant was pulled over and arrested in South Lake Tahoe. He claimed Schultz had given him the car for painting services. Schultz's credit cards were in his wallet. On the back of a booking memo at the jail at South Lake Tahoe, defendant wrote: "There are certain things that you cannot say you're sorry for -- There are certain things, once done, which can never be forgiven or erased."

PROCEDURE

The district attorney filed an information charging defendant with murder, first degree robbery, vehicle theft, fraudulent use of a credit card, and theft and fraudulent use of an access card. The information also alleged robbery as a murder special circumstance. A jury convicted defendant as

charged. The trial court sentenced defendant to state prison for life without possibility of parole for the murder. The sentences on the remaining crimes were either stayed or set to run concurrently with the indeterminate term.

DISCUSSION

I

Admission of Autopsy Photographs

Defendant contends the trial court abused its discretion and denied him due process and a fair trial when it, over his objection, admitted autopsy photographs of the victim's body. We conclude, based on the probative value of the photographs weighed against possible prejudice, that the trial court did not abuse its discretion and defendant was not denied his due process and fair trial rights.

""The admission of photographs of a victim lies within the broad discretion of the trial court when a claim is made that they are unduly gruesome or inflammatory. [Citations.] The court's exercise of that discretion will not be disturbed on appeal unless the probative value of the photographs clearly is outweighed by their prejudicial effect. [Citations.]" [Citation.]' [Citation.]" (*People v. Hart* (1999) 20 Cal.4th 546, 615-616, citing *People v. Crittenden* (1994) 9 Cal.4th 83, 133-134.)

We begin by noting that the trial court did not admit photographs of the victim's entire body. The photographs at issue here were of specific parts of the body, each admitted to assist the jury in specific ways. Exhibit one shows the

victim's skull in the area of the eye sockets and part of the forehead, with fractures in the eye socket and upper nasal areas. A towel covers the face below the eye sockets. Exhibits two and three are photographs of the top of the skull. The hair is mostly gone and the skin is discolored and blotchy. There are lacerations in the skull with maggots. Exhibit four shows the back of the victim's head, with large lacerations and maggots. An ear and the neck or shoulder are also visible. Exhibit five is a view of the left arm, also darkly discolored, and shows the hand with a broken finger. A portion of the victim's side also appears in this photograph. The prosecution withdrew exhibit six. In exhibit seven, rulers are positioned next to bruised and discolored flesh.

The photographs were probative concerning the issues at trial in at least two ways: (1) the nature and extent of the injuries shown in the photographs were relevant to malice and (2) the condition of the corpse, including the presence of insects, was relevant to the time of death. To be sure, the sight of a corpse in a state of decomposition with maggots crawling on it is unpleasant. But the trial court properly took that into account in ruling on the admissibility of the photographs. Defendant's argument emphasizes the decomposition of the body and the maggots, citing authority that these factors make a photograph particularly gruesome. (See *People v. Cavanaugh* (1955) 44 Cal.2d 252, 266-267 [decomposition and maggots].) But the condition of the corpse, though gruesome,

was important to the prosecution's efforts to place defendant at the victim's residence around the time she died.

In arguing that the photographs should not have been admitted, defendant notes that the prosecution did not introduce the photographs when the forensic entomologist testified and finally introduced them only toward the end of the case-in-chief. What occurred after the trial court ruled, however, is immaterial to whether the ruling was correct. We review the trial court's ruling based on the record before the court when it made the ruling. (*People v. Griffin* (2004) 33 Cal.4th 536, 574.)

The court, after noting the specific probative value and the gruesome nature of the evidence, concluded the probative value of the photographs outweighed possible prejudice. This conclusion was not an abuse of discretion. The jury is entitled to see the physical evidence that supported the prosecution's theories of defendant's guilt. (*People v. Pride* (1992) 3 Cal.4th 195, 243.)

Defendant also claims the introduction of the photographs violated his due process and fair trial rights. This claim, however, is premised on the assertion that the photographs were unduly prejudicial. We have concluded the photographs were not unduly prejudicial. Therefore, we also reject the due process and fair trial claim.

II

CALJIC No. 2.51

Defendant contends that, by giving the jury CALJIC No. 2.51 concerning motive, the trial court (1) gave an irrelevant instruction and (2) suggested to the jury that motive alone could establish guilt. The contention is without merit.

CALJIC No. 2.51, as given, states: "Motive is not an element of the crime charged and need not be shown. However, you may consider motive or lack of motive as a circumstance in this case. The presence of motive may tend to establish a defendant is guilty. Absence of motive may tend to show a defendant is not guilty." Defendant did not object to this instruction.

1. *Relevance*

Defendant argues: "[I]f Schultz was a robbery victim, then whoever committed the robbery (and presumably murder) had a financial motivation. There was no sufficient evidence to support an inference that defendant had any other motive, so the instruction unfairly allowed the jury to rely on a common motive to find defendant guilty." (Emphasis in original.)

This argument fails because, considering the strength of the evidence that defendant robbed the victim, the instruction was helpful to the jury. If defendant robbed the victim, he had a motive to kill her -- that is, to disable her for the purpose of robbing her.

2. *Context*

Defendant contends that, because other similar instructions, such as those concerning consciousness of guilt, willfully false or misleading statements, similar acts evidence, and flight, cautioned the jury that those sorts of evidence were insufficient alone to establish guilt and, on the other hand, the motive instruction did not give a similar caution, the jury could reasonably conclude that it could find defendant guilty based on motive alone.

The Supreme Court recently rejected this argument in *People v. Jurado* (2006) 38 Cal.4th 72, at pages 124 and 125: "Because [the argument] challenges merely the clarity of the instruction, and because defendant did not ask the trial court to modify or clarify the instruction, defendant's contention is not preserved for appellate review. [Citation.] Had defendant preserved the contention, we would reject it on the merits. What we wrote [previously] applies with equal force here: 'The court fully instructed the jury on the reasonable doubt standard. We find no reasonable likelihood the jury would infer from the motive instruction that motive alone could establish guilt. Moreover, given the strong evidence of guilt aside from motive, the jury certainly did not base its verdicts solely on motive.' [Citation.]"

III

Cumulative Effect

Defendant contends the cumulative effect of the asserted errors requires reversal, even if each asserted error, by

itself, was not prejudicial. Because we have determined there was no error, this contention is also without merit.

DISPOSITION

The judgment is affirmed.

_____, NICHOLSON, Acting P.J.

We concur:

_____, RAYE, J.

_____, BUTZ, J.